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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/493,741	01/28/2000	Michal Lebl	A-68851-1/DJB/RMS/DCF	2613

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EXAMINER

BEISNER, WILLIAM H

ART UNIT	PAPER NUMBER
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1744

DATE MAILED: 11/27/2002

17

Please find below and/or attached an Office communication concerning this application or proceeding.

AS12

 Office Action Summary	Application No. 09/493,741	Applicant(s) LEBL, MICHAL	
	Examiner William H. Beisner	Art Unit 1744	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ____ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 September 2002.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 27-32 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 27-32 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
 If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____ .
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
 a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____ . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____ . | 6) <input type="checkbox"/> Other: ____ . |

DETAILED ACTION

Drawings

1. The corrected or substitute drawings were received on 16 Sept. 2002. These drawings are acceptable.

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the centrifuge including the rotor and waste reservoirs must be shown or the feature(s) canceled from the claim(s). No new matter should be entered. The instantly claimed waste chamber in combination with the rotor of the centrifuge device appear to be critical to the patentability as stressed in applicant's comments filed 16 Sept. 2002.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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4. Claims 27, 28 and 30-32 are rejected under 35 U.S.C. 102(b) as being anticipated by American Hospital Supply (GB 1 241 539).

The reference of American Hospital Supply discloses a centrifuge device (See Figure 9) which includes a rotor (13) which holds reaction vessels (26) in a tilted position away from the axis of rotation. The reference discloses that the lower ends of the tube can be displaced inwardly, the tubes tilt away from the axis of rotation (See page 2, lines 90-96 and Figure 9). The reaction vessels are communicated with a waste reservoir (65) with a tube (65) which is connected to bottom of housing (18) and (10). Housing (18) can also be considered a waste reservoir connected to the bottom of the centrifuge. The rotor includes a liquid distribution system (39) and the centrifuge is controlled by computer (36).

5. Claims 27 and 30-32 are rejected under 35 U.S.C. 102(b) as being anticipated by Genese et al.(US 3,712,535).

The reference of Genese et al. discloses a centrifuge device (See Figure 2) which includes a rotor (10) which holds reaction vessels (38) in a tilted position away from the axis of rotation (See position A in Figure 2 and column 6, lines 28-49). The reaction vessels are communicated with a waste reservoir (40) with a drain opening (See column 4, lines 49-51). The rotor includes a liquid distribution system (42) and the centrifuge is controlled by computer (73).

Claim Rejections - 35 USC § 103

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

7. Claims 28 and 30-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Genese et al.(US 3,712,525) in view of American Hospital Supply (GB 1 241 539).

The reference of Genese et al. has been discussed above.

While the reference discloses container (40) with a drain port (See column 4, lines 49-51), the instant claims require a tube and reservoir for collecting waste liquids.

The reference of American Hospital Supply discloses that it is known in the art to employ a tube and waste vessel (65) in communication with a centrifuge device.

In view of this teaching, it would have been obvious to one of ordinary skill in the art to employ a tube and vessel system of American Hospital Supply with the drain port of the primary reference for the known and expected result of providing a means known in the art for collecting waste materials.

8. Claims 29/27 and 29/28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tamai (JP 64-83153) in view of American Hospital Supply (GB 1 241 539).

The reference of Tamai discloses a centrifuge device with a rotor (2) which supports a plurality of microplate vessels (3). The device includes a waste reservoir (30) to hold liquids expelled from said reaction vessels.

While the reference of Tamai discloses holding a plurality of microtiter plates, the claims differ by reciting that the plates are held in a tilted position away from the axis of rotation of the rotor.

The reference of American Hospital Supply discloses that it is known in the art to empty a vessel being centrifuged by allowing the vessel to tilt "outward" (See page 4, lines 30-40 and Figure 9; and page 2, lines 90-96).

In view of this teaching, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the holder of the primary reference so as to allow the vessels to tilt outward for the known and expected result of ensuring the emptying of the wells (44) as is taught by the secondary references and required of the primary reference of Tamai.

9. Claim 29/27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tamai (JP 64-83153) in view of Genese et al.(3,712,525).

The reference of Tamai discloses a centrifuge device with a rotor (2) which supports a plurality of microplate vessels (3). The device includes a waste reservoir (30) to hold liquids expelled from said reaction vessels.

While the reference of Tamai discloses holding a plurality of microtiter plates, the claims differ by reciting that the plates are held in a tilted position away from the axis of rotation of the rotor.

The reference of Genese et al. discloses that it is known in the art to decant a vessel in a centrifuge device using a negative tilt (See column 9, line 28-47).

In view of this teaching, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the holder of the primary reference so as to allow the vessels to tilt outward for the known and expected result of ensuring the emptying of the wells (44) as is taught by the secondary references and required of the primary reference of Tamai.

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10. Claim 29/28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tamai (JP 64-83153) in view of Genese et al.(3,712,525) and American Hospital Supply (GB 1 241 539)

The combination of the references of Tamai and Genese et al. has been discussed above.

While the reference of Genese et al. discloses container (40) with a drain port (See column 4, lines 49-51), the instant claims require a tube and reservoir for collecting waste liquids.

The reference of American Hospital Supply discloses that it is known in the art to employ a tube and waste vessel (65) in communication with a centrifuge device.

In view of this teaching, it would have been obvious to one of ordinary skill in the art to employ a tube and vessel system of American Hospital Supply with the drain port of the primary reference for the known and expected result of providing a means known in the art for collecting waste materials.

Response to Arguments

11. Applicant's arguments filed 16 Sept. 2002 have been fully considered but they are not persuasive.

With respect the rejection of the claims over the prior art reference of American Hospital Supply, Applicants argue that the rejection is improper because the reference does not teach a rotor to hold reaction vessels at a tilt away from the axis of rotation.

In response, the Examiner points to Figure 9 which depicts a tilted position of the vessel away from the axis of rotation as shown by the broken line. The reference discloses inward

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displacement of the lower ends of the tubes which would constitute a tilted position of the vessel away from the axis of rotation.

With respect to the combination of the references which includes the reference of Tamai, Applicants argue that the combination of the references is improper because the combination lacks motivation and because the combination, even if proper, fails to teach the claimed invention.

In response, with respect to motivation, the reference of American Hospital Supply, discloses that while not critical to decanting the vessel, the vessel can be tilted (See page 2, lines 90-96). This teaching reflects that while the plates of the primary reference may be kept vertical, the plates may also be tilted in the manner recited in the instant claims while still providing the required decanting. The amount of tilting may also depend on conditions such as the properties of the liquids being process and/or the volume of liquid contained in the vessels and/or desired amount to be displaced and/or the speed in which the rotor is rotated. All of these considerations are clearly within the level of one having ordinary skill in the art.

With respect to not teaching of the claimed features, the reference of American Hospital Supply clearly discloses that the vessel can be tilted as claimed for reasons already discussed previously.

Conclusion

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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The references of Kennedy (US 3,722,789), Aeschlimann et al.(US 4,236,666) and Intengan (US 4,285,463) are cited as prior art which pertains to rotor device for maintaining a tilt away from the axis of rotation. These references are silent as to the use of waste vessels.

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

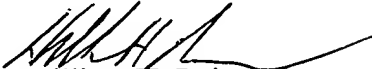
14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to William H. Beisner whose telephone number is 703-308-4006. The examiner can normally be reached on Tues. to Fri. and alt. Mon. from 6:40am to 4:10pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Warden can be reached on 703-308-2920. The fax phone numbers for the

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organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



William H. Beisner
Primary Examiner
Art Unit 1744

WHB
November 22, 2002